Wherefore, plaintiff sues and prays that said defendant be mandated to continue the employment of this relatrix as a teacher in the schools operated by said defendant in Chester School Township of Wabash County, State of Indiana; and for all other relief right and proper.

Plummer & Plummer, Attorneys for Plaintiff.

Duly sworn to by Dorothy Anderson. Jurat omitted in printing.

[fol. 8] IN THE WABASH CIRCUIT COURT

SUMMONS AND SHERIFF'S RETURN

STATE OF INDIANA,
Wabash County, ss:

The State of Indiana to the Sheriff of said County, Greetings; You are commanded to summon Walter E. Boyer, Trustee of Chester School Township of Wabash County, State of Indiana; to appear in the Wabash Circuit Court, before the Judge thereof on the 28th day of April, 1934 then and there to answer the complaint of State of Indiana on the relation of Dorothy Anderson and of this writ make due return.

Witness, the Clerk of said Court and seal thereof hereunto affixed at Wabash, this 16th day of April 1934.

G. H. Arnold, Clerk.

I hereby certify that the above is a true copy of the original summons.

——— ———, Sheriff of Wabash County.

Came to hand April 16, 1934, at 10 o'clock, A. M.

I have served the within summons as commanded, by reading the same to and within the hearing of Walter E. Boyer Trustee of Chester school Township of Wabash County State of Indiana and by leaving a true and certified copy of the within summons at the usual or last place of residence of ——— ———, ——— —, 193-.

H. L. Shoemaker, Sheriff of Wabash County, H. Farr, Deputy.

[fol. 9] [File endorsement omitted]

IN THE WABASH CIRCUIT COURT

[Title omitted]

SPECIAL APPEARANCE OF DEFENDANT—Filed April 27, 1934

John F. Kelton, attorney for the above named defendant, Walter E. Boyer, Trustee of Chester School Township, hereby enters his special appearance for said defendant in said cause.

John F. Kelton, Attorney for Deft.

[fol. 10] IN THE WABASH CIRCUIT COURT

[Title omitted]

RULE TO ANSWER—May 2, 1934

Now to-wit: The said defendant is ordered, ruled to answer the complaint fifth Monday being May 7th, 1934.

[fol. 11] IN THE WABASH CIRCUIT COURT

[Title omitted]

DEMURRER—Filed May 7, 1934

The defendant, Walter E. Boyer, Trustee of Chester School Township, demurs to the plaintiff's complaint and says that said complaint does not state facts sufficient to constitute a good cause of action.

John F. Kelton, Attorney for Defendant.

Memoranda

1. Plaintiff's complaint shows on its face that the matters therein pleaded were submitted to the Township Trustee in said Township, and by him determined in favor of the defendant; that an appeal from the findings and order made by said Township Trustee in said cause was taken by the relatrix herein to Neil M. Good, County Superintendent,

who then and there had jurisdiction to try said cause, and said County Superintendent determined said cause in favor of the defendant, and it is nowhere alleged or shown by the complaint herein that there was any bad faith, corruption, fraud or gross abuse of discretion on the part of the Township Trustee or said County Superintendent in the hearing and trial of said cause.

2. That the complaint shows that the action is based upon Section One of an Act of the Legislature of the State of Indiana, approved March 8, 1927, which said Statute was [fol. 12] repealed by the Legislature of the State of Indiana in so far as it applied to school teachers' tenure law in townships in said state.

3. That the plaintiff's action is founded upon a Statute which has been repealed by the Legislature of the State of Indiana, and there was not, at the time of the filing of this suit, any law in force in said state of Indiana under which this action can be maintained.

John F. Kelton, Attorney for Defendant.

[fol. 13] IN THE WABASH CIRCUIT COURT

[Title omitted]

DEMURRER—Filed May 25, 1934

The defendant, Walter E. Boyer, Trustee of Chester School Township, demurs to the plaintiff's complaint and says that said complaint does not state facts sufficient to constitute a good cause of action.

John F. Kelton, Attorney for Defendant.

Memoranda

1. Plaintiff's complaint shows on its face that the matters therein pleaded were submitted to the Township Trustee in said Township, and by him determined in favor of the defendant; that an appeal from the findings and order made by said Township Trustee in said cause was taken by the relatrix herein to Neil M. Good, County Superintendent, who then and there had jurisdiction to try said cause, and said County Superintendent determined said cause in favor of the defendant, and it is nowhere alleged

or shown by the complaint herein that there was any bad faith, corruption, fraud or gross abuse of discretion on the part of the Township Trustee of said County Superintendent in the hearing and trial of said cause.

[fol. 14] 3. That the plaintiff's action is founded upon a Statute which has been repealed by the Legislature of the State of Indiana, and there was not, at the time of the filing of this suit, any law in force in said state of Indiana under which this action can be maintained.

John F. Kelton, Attorney for Defendant.

In Wabash Circuit Court

[Title omitted]

Order Sustaining Demurrer—October 24, 1934

Come the parties by counsel, and the demurrer to the Complaint is sustained by the court, to which ruling of the court the plaintiff excepts, and said plaintiff refuses to plead further and judgment is now rendered against plaintiff upon demurrer.

It is, therefore, considered, adjudged and decreed by the court that the plaintiff take nothing by this action and costs are taxed against the plaintiff. And said plaintiff prays an appeal to Supreme Court of Indiana, which appeal is granted by the court.

[fol. 15] In the Wabash Circuit Court

[Title omitted]

Petition to Substitute Defendant—Filed April 5, 1935

[fol. 16] The relatrix herein, Dorothy Anderson, being duly sworn upon her oath says:

That the above cause of action is an action to mandate the Trustee of Chester School Township of Wabash County, State of Indiana, to continue the employment of this relatrix as a teacher in the schools of said Chester School Township.

That at the time this action was brought and thereafter until the first day of January, 1935, Walter E. Boyer, the defendant above named, was Trustee of Chester School Township of Wabash County, State of Indiana.

That his term of office expired on the 31st day of December, 1934, and that Harry Brand is now the duly elected qualified, and serving Trustee of Chester School Township of Wabash County, State of Indiana.

That said action was an action against the said Walter E. Boyer in his official capacity as said trustee of said township.

That judgment was entered against this relatrix in said cause in the Wabash Circuit Court of Wabash County, State of Indiana on the 24th day of October, 1934, from which judgment this relatrix prayed an appeal to the Supreme Court of the State of Indiana.

That the said Harry Brand, Trustee of Chester School Township of Wabash County, State of Indiana, should be substituted as party defendant in said action in order that this relatrix may have a full and complete determination of her cause of action on appeal to the Supreme Court of the State of Indiana.

[fol. 17] Wherefore, this relatrix asks an order of court substituting Harry Brand Trustee of Chester School Township of Wabash County, State of Indiana, as party defendant herein after due notice given.

Dorothy Anderson.

Subscribed and sworn to before me this 4th day of April, 1935. F. W. Plummer, Notary Public. My comm. exp. January 7, 1939.

The Clerk of Wabash Circuit Court shall issue notice to the Sheriff of Wabash County for Harry Brand, Trustee of Chester Township of Wabash County, State of Indiana, Returnable April 16, 1935.

Plummer & Plummer, Atty, for Plaintiff.

IN THE WABASH CIRCUIT COURT

[Title omitted]

NOTICE OF PETITION TO SUBSTITUTE PARTY DEFENDANT—
Filed April 5, 1935

To Harry Brand, Trustee of Chester School Township of Wabash County, State of Indiana:

[fol. 18] You are hereby notified that the relatrix in the above entitled cause of action, Dorothy Anderson, has filed her petition in the Wabash Circuit Court of Wabash County, State of Indiana asking that you be substituted as party defendant in the above entitled cause of action.

You are fu-there notified that said petition will be heard by the Wabash Circuit Court of Wabash County, State of Indiana on the 16th day of April, 1935, in the Court House in the City of Wabash, Indiana, of which you will take due notice.

Dated this 5th day of April, 1935.

Grover H. Arnold, Clerk of the Wabash Circuit Court.

Came to hand April 5th, 1935. Served by reading and leaving a copy with Harry Brand, April 5th, 1935.

H. L. Shoemaker, Sheriff, by Harry Farr, Deputy.

[File endorsement omitted.]

[fol. 19] IN WABASH CIRCUIT COURT

[Title omitted]

ORDER SUBSTITUTING DEFENDANT—April 16, 1935

Comes now the plaintiff by counsel and files proof of service of notice to substitute defendant, which proof is copied heretofore. And said petition to substitute party defendant is now submitted to the court and evidence is heard, and the court being advised in the premises finds for the petitioner, that Harry Brand, trustee of Chester School Township of Wabash County, State of Indiana, be and is hereby substituted as defendant herein.

It is, therefore, considered, adjudged, and ordered by the court that said Harry Brand, trustee of Chester School Township of Wabash County, State of Indiana be and is hereby substituted as defendant herein.

[fol. 20] IN THE WABASH CIRCUIT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Wabash Circuit Court, Wabash County, State of Indiana:

You are hereby directed to prepare a transcript of the record for an appeal to the Supreme Court of Indiana, in cause #5342 in the Circuit Court of said county of Wabash, State of Indiana, entitled State of Indiana on the relation of Dorothy Anderson vs. Harry Brand, Trustee of Chester School Township of Wabash County, State of Indiana, in whose place and stead Harry Brand, Trustee of Chester School Township of Wabash County, State of Indiana has been substituted by order of the Wabash Circuit Court as party defendnat in which cause final judgment on October 24, 1934 and to include therein the following:—The transcript of the entire record.

Dorothy Anderson, Relatrix, by Plummer and Plummer, Her Attorneys.

[fol. 21] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 22] IN SUPREME COURT OF INDIANA

No. 26560

Appeal from Wabash Circuit Court

STATE OF INDIANA ex Rel. DOROTHY ANDERSON

vs.

HARRY BRAND, Trustee of Chester School Township, etc.

JOURNAL ENTRIES

1935, Apr. 18. Record Assgt. of Error. Præcipe for Notice.

1935, May 18. Submitted &c.

1935, July 13. Appellant's pet. for time.

1935, July 15. Appellant's pet. for time granted to and inc. Sept. 3, 1935.

1935, Aug. 31. Appellant's pet. for time, notice & consent.

1935, Sept. 3. Appellant's pet. for time, granted to and inc. Oct. 3, 1935.

1935, Oct. 2. Appellant's brief (10).

1935, Nov. 1. Appellee's pet. for time granted to and inc. Dec. 4, 1935.

1935, Dec. 4. Appellee's brief (10).

1937, Jan. 14. 45th Day Nov. Term—Affirmed Fansler, J. —Treanor, J.—dissents.

1937, Feb. 2. 61st Day Nov. Term—Dissenting opinion by Treanor, J.

1937, Mar. 13. Appellant's pet. for rehearing & brief (10).

1937, Mar. 15. Appellant's amendment to appellant's pet. for rehearing, etc.

1937, Mar. 20. Appellee's pet. for leave to file brief in opposition to pet. for rehearing.

1937, Mar. 22. Appellee's petition for leave to file brief granted, brief to be filed on or before Apr. 5, 1937.

1937, Apr. 5. Appellee's brief (10) opposing appellant's pet. for rehearing.

[fols. 23-24] 1937, Apr. 7. Petition of counsel for Indiana State Teachers Assn. for leave to file brief amici curiæ.

1937, Apr. 8. Pet. of counsel for Ind. Teacher Ass'n for leave to file brief amici curiæ granted.

1937, Apr. 9. Brief (10) of counsel for Ind. State Teachers Federation of Indiana.

1937, Apr. 10. Appellee's motion to deny petition of Ind. State Teachers Ass'n to file brief amici curiæ.

1937, April 27. Appellant's pet. for rehearing, denied with opinion by Fansler, J.; Treanor, J. dissents.

1937, June 23. Memorandum of court concerning opinion.

[fol. 25] IN THE SUPREME COURT OF INDIANA

[Title omitted]

ASSIGNMENT OF ERROR—Filed April 18, 1935

The Appellant says there is manifest error in the judgment and proceedings prejudicial to Appellant in this cause in this:

1. The Court erred in sustaining Appellee's demurrer to Appellant's complaint.

Plummer & Plummer, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 26] IN SUPREME COURT OF INDIANA

[Title omitted]

JUDGMENT—January 14, 1937

Come now the parties by counsel and the Court, being advised in the premises, affirms the judgment of the court below with the following opinion pronounced by. Fansler, J. (H. I.). Treanor J dissenting.

It is therefore considered by the Court that the judgment of the court below in the above cause be in all things affirmed at the cost of appellant.

And it is further considered and adjudged by the Court that the appellee recover of the appellant the sum of $— for — costs in this behalf expended.

[fol. 27] IN THE SUPREME COURT OF INDIANA

[Title omitted]

OPINION.—January 14, 1937

FANSLER, J.:

By this action it is sought to mandate appellee to continue relatrix in the employ of the township as a school teacher under the Act of 1927 (Acts 1927, c 97; p. 259), which provides that a person who has served for five or more successive years as a teacher, and shall thereafter enter into a contract for further service, shall become a permanent teacher. The act was amended in 1933 (Acts 1933, c. 116, p. 716, Burns' Ann. St. 1933, § 28-4307), and made to apply to city and town school corporations only. Townships, to which the act originally applied, were omitted in the amendment, which had the effect of repealing the law so far as township schools, and the teachers therein are concerned.

A demurrer to the complaint was sustained. The relatrix contends that this was error; that, having become a permanent teacher under the Teachers' Tenure Law before the amendment, she had a vested property right in her indefinite contract, which may not be impaired under the Constitution. The question is whether there is a vested right in a permanent teacher's contract; whether, under the tenure law, there is a grant which cannot lawfully be impaired by a repeal of the statute.

[fol. 28] The establishment and maintenance of public schools is a governmental function, jurisdiction over which vests in the General Assembly, whose power, subject to constitutional limitation, is plenary, and whose discretion is not reviewable. This legislative power is not exhausted by exercise, and schools may be continued or discontinued, and the school system changed, or one system substituted for another, as often as the Legislature may deem it necessary or advisable in the public interest. Follett v. Sheldon, Treas. (1924) 195 Ind. 510, 144 N. E. 867. In establishing schools and enacting laws for their regulation, and in licensing teachers and providing for their tenure, the General Assembly acts for the benefit of the public, and not for the benefit of the teachers. In a case in which it was contended that a provision of the statute, providing for the

revocation of teachers' licenses by the county superintendent, was unconstitutional for the reason that there was a vested property right in the license, this court said:

"It must be remembered that the establishment and regulation of public schools rests primarily with the legislative department, and the constitutional provisions invoked by appellee were not designed to trammel the State in the exercise of its general political powers, or to impose upon the courts the duty of interposing between the legislature and the citizens in matters of purely governmental concern. * * * A license has none of the elements of a contract, and does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed. Statutes authorizing the issuance of such licenses are en- [fol. 29] acted to promote the good order and welfare of the State, and may ordinarily be repealed at the pleasure of the legislature. (Authorities.)

"In the case of Doyle v. Continental Ins. Co. (1876) 94 U. S. 535, 540, 24 L. Ed. 148, the Supreme Court of the United States, in speaking of licenses, said: 'The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a state is always revocable.' " Stone, Supt., v. Fritts (1907) 169 Ind. 361, 364, 365, 82 N. E. 792, 794.

The tenure law does not purport to give a teacher a definite and permanent contract. The word "indefinite" is used in the statute itself. The contract is variable as to compensation, and the tenure is permanent only in the event that it is not necessary to reduce the number of teachers. In effect therefore it gives the tenure teacher preferential rights over the teachers who have not attained a tenure status. If the purpose of this statute had been the granting of special privileges to certain teachers for their own benefit, its constitutionality would be seriously in question. But its enactment can be justified upon the theory that its purpose is to promote good order and the welfare of the state and of the school system by preventing the removal of capable and experienced teachers at the political or personal whim of changing officeholders. A future General Assembly may favor a policy of constant change of teachers. The courts are powerless to prevent such a change. Each succeeding Legislature is free and untram-

meled in its right to change governmental policy. The revocation of a tenure teacher's license would, of course, [fols. 30-31] carry with it the indefinite contract. The contract, like the license upon which it rests, is a privilege granted by grace of the sovereign for the purpose of promoting the good order and welfare of the state. The license is broader in its bearing than the contract. Without the license a tenure contract cannot exist. Since there is legislative power to revoke the license and thus destroy the contract, there must necessarily be power to do the lesser thing, and merely revoke the tenure contract without canceling the license. The tenure statute was only intended as a limitation upon the plenary power of local school officials to cancel contracts. Ratcliff v. Dick Johnson School Twp. (1933) 204 Ind. 525, 185 N. E. 143. It was not intended as, and cannot be, a limitation upon the power of future Legislatures to change the law respecting teachers and their tenures. These are matters of public policy, of purely governmental concern, in which the legislative power cannot be exhausted or consumed, or contracted away, so as to limit the discretion of future General Assemblies. The repeal of the statute, in so far as it affects townships and township schools, removes the restriction upon the power of the school corporation so far as it affects the preferential or so-called tenure rights of teachers, and leaves the township officers free to renew teachers' contracts or not as may be deemed expedient.

Judgment affirmed.

[fol. 32] [Title omitted]

DISSENTING OPINION—Filed February 2, 1937

TREANOR, J., dissenting.

I cannot agree with the reasoning and result reached by the majority of the Court for two reasons.

(1) The 1933 Amendment to the Teachers' Tenure Act should be given a prospective effect in accordance with the well recognized rule that statutes "are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect be clearly intended."[1]

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[1] Maxwell, Interpretation of Statutes, 7th Ed. p. 186.

(2) If, in order to give effect to legislative intent, the 1933 Amendment must be construed to operate retrospectively the legislative enactment violates the inhibitions of the United States Constitution and the Indiana Constitution against impairment of contracts.

No rule of statutory interpretation is more generally taken for granted than the rule that statutes will be treated as prospective rather than retrospective. Such a rule is supported by a sense of justice and fair dealing and is in accord with the elementary distinction between judicially and legislatively declared rules. Normally a legislatively declared rule applies to future conduct; while a judicially declared rule governs past as well as future conduct. Consequently when a statute attaches certain legal consequences [fol. 33] to certain stated conduct, no court would tolerate the suggestion that such consequences would attach to conduct which occurred prior to the effective date of the statute, unless the statute requires such retroactive effect either by express provisions or by necessary implication.

The English cases consistently give effect to the presumption that statutes operate prospectively rather than retrospectively; and these cases emphasize the inherent validity and justice of the presumption since the English courts are under no constitutional pressure to deny a retroactive effect to statutes in order to avoid a construction which would render the statute invalid because of violation of a constitutional inhibition against impairment of contract. It is stated in the leading English authority on interpretation of statutes that "it is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."[2] The foregoing rule is supported by the following statement of a leading English case. "No rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly

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[2] Maxwell, Interpretation of Statutes, 7th Ed. p. 186.

capable of either interpretation, it ought to be construed as prospective only."[3]

The statements of American courts are substantially the same as those of the English courts. It is stated in Lewis' [fol. 34] Sutherland Statutory Construction that "The general rule is that statutes will be construed to operate prospectively only, unless an intent to the contrary clearly appears."[4] In support of the foregoing statement numerous excerpts of decisions of state courts are quoted; of which excerpts the following is typical: "The rule is that statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction."[5]

The objections which are urged against retrospective operation of a new statute apply with equal validity to the repeal of a statute when a retrospective operation would have the effect of destroying legally protected interests which have been created by operation of the statute. "A law can be repealed by the law-giver; but the rights which have been acquired under it while it was in force do not thereby cease. It would be an act of absolute injustice to abolish with a law all the effects which it had produced."[6] Consequently in the case of a repeal of an existing statute,

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[3] Quoted from Athlumney, In re (1898) 2 Q. B., Wright, J. at pp. 551-552.

Quoting from Maxwell on Interpretation of Statutes at page 187. "It is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions, or impair contracts, that the rule in question prevails. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation."

[4] Sec. 642, p. 1157.

[5] Quoted from Bauer Grocer Co. v. Zelle, 172 Ill. 407, 50 N. E. 238.

[6] Lewis' Sutherland Statutory Construction, 2d Ed. p. 547.

the same as in the case of an enactment of a new statute, courts have assumed that the legislative intent was not to give a retrospective operation, unless the contrary was clearly indicated by the terms of the repealing act.

By the terms of the Teachers' Tenure Act of 1927 (Acts. 1927, c. 97, p. 250) township school corporation were included within its scope; and the 1933 Amending Act, (Acts 1933, c. 116, p. 716) excludes township school corporations merely by omitting the words "any school corporation" and substituting therefor "any school city corporation or * * * any school town corporation." There is nowhere in the Amending Act of 1933 any express declaration of an intention of the General Assembly to give the Amending Act retrospective effect.

[fol. 35] The General Assembly enacted the repealing act with knowledge that this Court follows the rule that statutes are presumed to operate prospectively rather than retrospectively; and this Court should assume that the legislative intent was for this presumption to prevail, since nothing to the contrary appears in the Act. And since there appears to be no reason why the constitutionality of the Amending Act would be imperiled by construing it to operate prospectively only, this Court is under no compulsion to construe it to operate retrospectively in order to save its constitutionality. Consequently, this Court, being under no compulsion to favor retrospective operation, is under a compulsion to follow the general rule that a statute should be construed to operate prospectively in the absence of any indication in the Act itself of the legislative intention that it operate retrospectively.

In accordance with the foregoing it is my belief that the Amending Act of 1933 should be construed to operate prospectively, and to leave unimpaired the rights and privileges of township teachers which were acquired under their indefinite contracts prior to the effective date of the Amending Act of the 1933 General Assembly.

But if the Amending Act must be construed to operate retrospectively, I am of the opinion that it violates Article 1, Sec. 24 of the Indiana Constitution, and Article 1, Sec. 10 of the Federal Constitution.

Prior to the enactment of the Teachers' Tenure Act of 1927 the employment relationship between a school corporation and a teacher was created and governed by a contract,

and was legally binding upon both teacher and school corporation. The ordinary contract was for a fixed period; [fol. 36] usually for a single term of school. In view of numerous decisions of the Supreme and Appellate Courts of this State it is clear that such a contract carried with it all the rights and duties of contract generally. Since such contracts were for personal services the only remedy which a teacher had in case of breach of contract by the school corporation was to sue for damages. In such a suit the usual rules regulating recovery of damages for breach of contract were applied by the courts. While it was often said that a school corporation could dismiss a teacher for cause, this necessarily could have meant, under the decided cases, only that a school corporation could abrogate its contractual relations with the teacher if the teacher was unable or unwilling to substantially perform his contract. This was merely an application of the general rule that one party to a contract can rescind in case of failure of performance by the other party.

The Tenure Act did not change the method of creating the employer-employee relationship between school corporations and teachers, but only changed the incidents of the contract which creates the relationship. As long as the contract which creates the employer-employee relationship between a school corporation and a teacher has not ripened into an indefinite contract, the school corporation can repudiate the contract and the only recourse that the teacher has is to sue for damages. But Section 1 of the Act of 1927, supra expressly provides that an indefinite contract "shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided * * *" in the act. This deprives the school corporation of the legal power to repudiate indefinite contracts of em- [fol. 37] ployment with permanent teachers and gives to the teacher the legal right to continue in the employer-employee relationship with the school corporation under the terms and conditions of the indefinite contract. The legal result is that the teacher has a legally protected tenure of position until the same is terminated in accordance with the provisions of the statute.

When a court of competent jurisdiction decides that a school corporation unlawfully has declared the cancellation of an indefinite contract, the factual and legal result is that the indefinite contract has not been cancelled, but is in full

force and effect. And when the court further adjudges that the order purporting to cancel the contract should be set aside, and that the teacher should be reinstated in her position, the factual consequence is that the school corporation is being compelled specifically to perform its contract to continue the teacher in the employer-employee relationship.

In short, under an indefinite contract, a permanent teacher enjoys a legally enforceable right to be continued in his position as a teacher. This right is of equal validity with the right to recover damages for breach of a non-tenure contract; and is equally the creation of a contract. There are at present thousands of teachers in Indiana who have not become permanent teachers under an indefinite contract but are employed under a contract for a definite period of service. If the present General Assembly should decide to change the policy of authorizing school corporations to contract with teachers and to substitute the policy of appointing teachers at pleasure; and in pursuance of that policy should deprive school corporations of the power [fol. 38] to enter into contracts of employment with teachers; and should further provide that all contracts heretofore entered into should be abrogated, it is not conceivable that such action could deprive a non-tenure teacher of his right to recover damages for breach of contract in case his employing school corporation, acting under such statute, should refuse to carry out the existing contract of employment in accordance with its terms. It seems to the writer equally inconceivable that the General Assembly can abrogate an existing indefinite contract and thereby destroy the valid legally enforceable right of tenure which is a legal incident of the contract; and which, as above pointed out, is as essential an element of the indefinite contract as the right to recover damages is of a non-tenure contract.

The majority opinion assumes that the legal quality of the so-called "indefinite" contract is vitiated by its indefiniteness. But it is indefinite only in respect to the life of the contract, which is not limited to a definite and fixed period of time, although the Act provides for a definite method of ending the contract relation. At any particular time in the life of the contract all the terms which affect its performance are definite. It is true that provision is made in the statute for changes by mutual consent of school corporation and teacher, and for some changes without the

consent of the teacher. But many contracts between private persons have provisions which authorize change in the manner and time of performance, and it has never been supposed that such provisions affect the legal quality of the contract. The contractual relationship which arises as a result of the mutual agreement of the parties remains legally unimpaired, although the mutual obligations of the [fol. 39] parties may have been varied by modification of the original terms and conditions of the contract. And if we grant that the General Assembly has the constitutional power to authorize school corporations and teachers to enter into a contractual relationship of indefinite duration, it necessarily follows that the fact of indefiniteness of duration can not, in and of itself, qualify the contractual rights of the contracting parties. The only purpose and effect of the statutory requirement that the contract should continue for an indefinite period of time is to avoid setting an arbitrary limit to the time element of tenure. Instead of authorizing and requiring an indefinite contract the General Assembly might have provided that the last contract of the probationary period of service should continue for ten years; in which case the legally enforceable period of tenure would be definitely limited to ten years. Whether tenure is protected and made legally enforceable for an indefinite period of time, or only for a fixed and definite period of time, can make no difference in the legal quality of the contract.

Numerous decisions of this Court support the following statement in the majority opinion: "The establishment and maintenance of public schools is a governmental function, jurisdiction over which vests in the General Assembly, whose power, subject to constitutional limitation, is plenary, and whose discretion is not reviewable. This legislative power is not exhausted by exercise, and schools may be continued or discontinued, and the school system changed, or one system substituted for another, as often as the Legislature may deem it necessary or advisable in the public interest." But the foregoing does not validate the conclusion that the General Assembly can destroy the legal consequences of acts which have been performed under the sanction of statutes which have been enacted [fol. 40] for the purpose of giving effect to a legislative policy respecting the school system of the state. If the method or system devised by the General Assembly for the

purpose of carrying out its educational policies includes the creation of contractual relations between the state, or its sub-divisions, and private persons, it does not follow that the repeal of the statute which authorized such contractual relations destroys the rights of private persons who have entered into contracts with the state or its local agencies. This is pointed out in the following excerpt from an opinion of the Supreme Court of Wisconsin:[7] "In State ex rel. Mayor, etc., decided herewith (189 Wis. 84, 206 N. W. 210), it is held that the entire field of education in this state is one of state affairs and regulations rather than one belonging to the local affairs or government of municipalities. Evidently, therefore, when the State by the law of 1921 expressly required (although undoubtedly the same effect would have been reached by its other provisions were such precise provisions omitted) that the State on the one hand and the teachers complying with the law on the other should come under certain fixed contractual obligations, the State cannot now lawfully withdraw or be relieved from such obligations by subsequent legislation.

"One engaging in teaching in this state and whose services are to be paid for in whole or in part by the state school fund is not a public officer and his valid contracts cannot lawfully be destroyed or impaired by subsequent legislation, because such contracts are within the protection of sec. 12, art. 1, Wisconsin constitution, prohibiting the passage of any law impairing the obligation of contracts, as well as by sec. 10, art. 1 of the constitution of the United States, prohibiting any state from passing any [fol. 41] such law."

The majority opinion assumes that the General Assembly has the power to revoke all licenses of teachers and that the revocation of tenure teacher's licenses "would of course carry with it the indefinite contract." The opinion continues as follows: "The contract, like the license upon which it rests, is a privilege granted by grace of the sovereign for the purpose of promoting the good order and welfare of the state. The license is broader in its bearing than the contract. Without the license a tenure contract cannot exist. Since there is legislative power to revoke the license and thus destroy the contract, there must neces-

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[7] State ex rel O'Neil v. Blied, 188 Wis. 442 (1925).

sarily be power to do the lesser thing, and merely revoke the tenure contract without cancelling the license."

Granting that the General Assembly can revoke all existing licenses and that such action would make ineffective all present contracts of teachers, it does not follow that the General Assembly can abrogate all existing contracts, without revoking all licenses. The decided cases which have held that a "mere license" is revocable have all pointed out that "A license has none of the elements of a contract, and does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed."[8] Revoking a license does not offend against the state and federal constitutional prohibition against impairment of contract; and while it is true that neither a tenure contract, nor a non-tenure contract, can exist between one who is not licensed to teach and a school corporation, yet the fact remains that at the effective date of the repeal act of 1933 the General Assembly had not revoked licenses and the contracts affected by the repeal were existing and valid contracts.

[fol. 42] It is stated in the majority opinion that "The tenure statute was only intended as a limitation upon the plenary power of local school officials to cancel contracts." The foregoing statement is not justified by the decisions of this Court if it must be understood to imply that prior to enactment of the Tenure Act school officials had plenary power to abrogate contractual obligations. Prior to the enactment of the Tenure Act the school officials did have full discretion in the selection of teachers from among qualified applicants; and at the expiration of the usual one school-term contract the school corporation was under no legal obligation to re-employ any particular teacher under a new contract. But school officials have not had at any time plenary power to cancel contracts in the sense that they could end legal liability thereunder.

I can not agree with the implications of the statement in the majority opinion that "The contract, like the license upon which it rests, is a privilege granted by grace of the sovereign for the purpose of promoting the good order and welfare of the state." In a sense all contractual relation-

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[8] Stone v. Fritts, (1907) 169 Ind. 361, p. 365.

ship is by the grace of the sovereign, because it is only by grace of the sovereign that the law attaches legally enforceable rights and duties to voluntary agreements which are denominated contracts. And in the case of indefinite contracts between school corporations and teachers it is the voluntary mutual consent of the parties that creates the contractual relationship, although the legal incidents of the relationship are determined by the terms of the statute which authorizes and governs that particular class of contracts. But such a contract is no more "a privilege granted by grace of the sovereign" than is a contract of sale and purchase of a parcel of land.

[fol. 43] It is evident that the purpose of the indefinite contract provisions of the Act of 1927 was to give to indefinite contracts the legal quality of the ordinary teacher contracts which provide for a definite term of service. And this Court has held that one who had become a permanent teacher under an indefinite contract with a township school corporation had acquired a right to hold his teaching position until the indefinite contract should be cancelled in accordance with the provisions of the Act of 1927, and that this right was legally enforceable. Compensated employment is surely a thing of value; and a legally enforceable right to be continued in such employment for even a short period of time is such a vested interest that it cannot be destroyed or impaired by subsequent legislation, even though it is enjoyed under a contract which has been authorized for the public interest.

The school code of California has contained permanent tenure provisions for many years, and the Supreme Court of that state has discussed at length many of the problems involved in the application of the various tenure provisions; and has declared unequivocally that a tenure teacher enjoys vested rights which cannot be taken away by subsequent legislation. The view of the California court is clearly indicated by the following excerpts from its opinions:

"Assuming that petitioner automatically attained permanent tenure prior to August 14, 1931, at which time the repeal of sections 5.500 to 5.502 of the School Code, as they then existed, occurred, that status was not lost by virtue of failure on the part of the Legislature to adopt, as part of the repealing act, a saving clause." Gastineau v. Meyer, 131 Cal. App. 611; 22 P. (2d) 31, 33.

[fol. 44] "Moreover, the last-mentioned section was enacted after the petitioner in this case had acquired permanent tenure by operation of law, and for that reason it could in no way affect his vested right to the enjoyment of that status." Id. p. 34.

"The language of this subdivision has remained substantially the same from its enactment in 1881 to its repeal by the School Code of 1929 (St. 1929, p. 303, § 10.3). Anderson v. Board of Education, 126 Cal. App. 514, 516, 15 P. (2d) 774, 16 P. (2d) 272. Of course, any tenure previously acquired by respondent was a vested right and remained unaffected by such repeal. Gastineau v. Meyer, 131 Cal. App. 611, 22 P. (2d) 31. In fact, section 5 of the preliminary provisions of the 1929 School Code (St. 1929, p. 1) recognized and continued previously acquired tenure."

Klein v. Board of Education, (1934) 37 P. (2d) 74, 75.

It is not clear that the Supreme Court of California entirely relied upon the rule that tenure rights can not be divested by act of the Legislature in deciding the cases in which the language above quoted was used. But the court clearly recognized the legal soundness of the rule that tenure rights are vested and are immune from legislative impairment.

The opinion of the Wisconsin Supreme Court in State ex rel O'Neil v. Blied, supra, has been referred to, and quoted from, and this case was cited in a later decision of the Wisconsin Court[9] as holding "That the status of one permanently employed as a teacher under such a system and with the rights so fixed cannot be impaired by subsequent legislation."

[fol. 45] In Hall v. Wisconsin[10] the Supreme Court of the United States considered a situation which does not seem to differ in its merits from the instant case. By Act of the Wisconsin Legislature Hall and two others had been appointed "commissioners" to make a "geological, mineralogical and agricultural survey of the state". By the terms

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[9] State ex rel Nyberg v. School Directors (1926) 190 Wis. 570-575.

[10] 103 U. S. 5.

of the Act the governor was required to enter into a written contract with each commissioner. The governor was authorized to fill vacancies in the commission and "to remove any member for incompetency or neglect of duty." On the 29th day of May, 1858, Hall entered into a contract with the governor which bound Hall to perform his duties; and it was stipulated that the contract should "continue till the third day of March, 1863, unless the said Hall should be removed for incompetency or neglect of duty, * * * or unless a vacancy shall occur in his office by his own act or default.'"

"On the part of the State it was stipulated 'that the said Hall shall receive for his compensation and expenses, including the expense of his department of said survey, at the rate of $2,000 per annum. * * * Provided, that for such time as said Hall or his assistants shall not be engaged in the prosecution of his duties, according to the terms of said act and of this contract, deduction shall be made, pro rata, from the sum of his annual compensation and expenses.'"

By a subsequent Act of March, 1862, Act of 1856 providing for the survey and appointing Hall a commissioner, and a later Act of 1860 relating to the commission were repealed without qualification. Hall sued to recover for his services from March 1862 to March 3, 1863. The views of the United States Supreme Court, which seem applicable to the present case, are fully disclosed by the following excerpts from the opinion:

[fol. 46] "In a sound view of the subject it seems to us that the legal position of the plaintiff in error was not materially different from that of parties who, pursuant to law, enter into stipulations limited in point of time, with a State, for the erection, alteration, or repair of public buildings, or to supply the officers or employes who occupy them with fuel, light, stationery, and other things necessary for the public service. The same reasoning is applicable to the countless employes in the same way, under the national government.

"It would be a novel and startling doctrine to all these classes of persons that the government might discard them at pleasure, because their respective employments were public offices, and hence without the protection of contract rights.

"It is not to be supposed that the plaintiff in error would have turned his back upon like employment, actual or potential, elsewhere, and have stipulated as he did to serve the State of Wisconsin for the period named, if the idea had been presented to his mind that the State had the reserved power to break the relation between them whenever it might choose to do so. Nor is there anything tending to show that those who acted in behalf of the State had any such view at that time. All the facts disclosed point to the opposite conclusion as to both parties."

I do not understand the decision in this case to be placed upon the ground that the abrogation of the indefinite contract was within the police power, although the appellees in State ex rel. Jones v. Kerr, Trustee, No. 26621 urge that "If the social interest in freedom from permanent contracts in public child education or in the township govern- [fol. 47] ment is paramount to the social interest in permanent contracts for public school teachers, the Legislature in the proper exercise of the police power of the State, may repeal such contracts." The Supreme Court of Indiana and the Supreme Court of the United States recognize that contractual obligations are subject to the police power. But to uphold such legislative subjection in any particular instance courts must be able to say that a vital social interest is protected by the subjection; and that such interest is paramount to "the social interest of the individual in the security and integrity of contractual relations into which he has entered, or the social interest in the general

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[11] Willis, Constitutional Law, p. 745.

"This social interest is really two social interests: first, the social interest in the performance of a contract by a promisor; * * * The first social interest was one of the most important recognized by the common law and was protected by the law of trusts and by what is known as the law of contracts, both of which have been constantly growing and enlarging in scope throughout the centuries. * * *

"The social interest in promised advantages recognized by the common law also received express recognition in the United States Constitution in the clause forbidding the states to impair the obligation of a contract * * * The due process clause, as we have already seen in this chapter,

security of legal transactions.''[11] Furthermore, in the instant case, it would be unreasonable for this Court to assume that public health, morals, safety or even the indefinite general welfare is promoted by eliminating township school corporations and their teachers from the tenure policy in view of the retention of that policy by the General Assembly for city school corporations and town school corporations; and especially since this Court has declared that the Teachers' Tenure Act is based upon the public policy of protecting the educational interests of the state and that the act should be construed liberally to affect its general purpose since it is legislation in which the public at large is interested.[12]

The indefinite contract between appellant-relator Dorothy Anderson and Chester School Township was a valid, existing contract at the effective date of the Amending Act of 1933; and by virtue of that contract the relator had acquired the legally enforceable right to be continued in her position of teacher in the schools of Chester School Town-
[fols. 48-49] ship. And in my opinion the Amending Act, under the construction placed upon it by the majority decision, violates Article 1, Sec. 24 of the Indiana Constitution and Article 1, Sec. 10 of the Federal Constitution. ''The law, under which the contract was executed, is to be and remain the only rule by which the contract shall be construed. The obligations shall not be increased, nor the rights diminished, by any Act of future legislation.''[13]

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has also been extended to afford protection against the impairment of the obligation of a contract, so that the social interest in promised advantages has now been recognized by the United States Supreme Court as a limitation on both the federal and the state governments.''

[12] State ex rel Clark v. Stout, Township Trustee (1933) 206 Ind. 58, 64; Whitlach v. School Township of Milan (1925) — Ind. —, 198 N. E. 85, 87.

[13] Lewis v. Brackenridge (1822) 1 Blackf. 220, 221.

[fol. 50] [File endorsement omitted.]

IN THE SUPREME COURT OF INDIANA

[Title omitted]

MOTION FOR A REHEARING—Filed March 13, 1937

The Appellant respectfully petitions the Court for a rehearing in the above entitled appeal on the following grounds:

[fol. 51] 1. The Supreme Court erred in affirming the judgment of the Wabash Circuit Court.

2. The Supreme Court erred in holding that each succeeding General Assembly "is free and untrammelled in its right to change government policy," when the change thereof would destroy contracts and contractual rights, entered into in good faith under Acts of a prior General Assembly.

3. The Court erred in holding that school teacher's tenure contracts under the Acts of the General Assembly of the State of Indiana, Acts 1927, Chapter 97, pp. 259-262, are subject to revocation by the General Assembly of the State of Indiana on the grounds of public policy.

4. The Court erred in holding that the repeal of the Teacher's Tenure Law of 1927, Chapter 97, pp. 259-262, insofar as it affects townships and township schools, permits the township school corporation to impair, revoke and annul contracts that had ripened into permanent teachers contracts under the prior law.

Respectfully submitted, Franklin W. Plummer, Howard E. Plummer, Attorneys for Appellant.

[fol. 52] IN THE SUPREME COURT OF INDIANA

[Title omitted]

AMENDMENT TO PETITION FOR A REHEARING—Filed March 15, 1937

The appellant within the time limited for filing a petition for a rehearing herein files this amendment to appellant's petition for a rehearing for the purpose of adding addi-

tional grounds thereto and supporting same by further law points and references to the brief in support of the petition for rehearing heretofore filed, the grounds for rehearing herein added being numbered consecutively after the grounds heretofore submitted in appellant's petition for a rehearing.

5. The Court erred in holding that appellant's contract was not within the protection of Article I, Section 10 of the Constitution of the United States.

[fol. 53] 6. The Court erred in holding that Section 1 of Chapter 116, page 716 of the Acts of 1933 constitutionally abrogated contract appellant sued upon.

7. The Court erred in holding that Section 1 Chapter 116 of the Acts of 1933 operated retrospectively so as to vitiate appellant's contract sued upon.

8. The Court erred in holding that the contract of the appellant under the Act of 1927, chapter 27, Section 1 did not constitute a contract within the meaning of the Contract-Impairement clause in Section 10 of Article I of the Constitution of the United States.

9. The Court erred in not giving effect to Chapter 36 Section 1, page 73 Acts of Special Session of 1877, being Burns 1933 Section 1—307, which reads as follows:

"Whenever an act is repealed which repeals a former act, such act shall not thereby be revived, unless it shall be so expressly provided. And the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute unless the repealing act shall so expressly provide; and such statute shall be treated as still remaining in force for the purposes of sustaining any proper act or prosecution for the enforcement of such penalty, forfeiture or liability."

If appellant's employment was a contract under the Teacher's Tenure Act of 1927, then notwithstanding any effect that the Teacher's Tenure Act of 1933 may have had, appellant's contract would be preserved by virtue of Burns Sec. 1—307 because it would have been a standing liability at the time of the enactment of the Act of 1933.

Central Indiana Railroad Co. vs. Davis, 78 Ind. App. 341 (132 N. E. 611).

Wherefore, the appellant further moves for a rehearing upon the grounds above enumerated in addition to those [fol. 54] heretofore filed.

Franklin W. Plummer, Howard E. Plummer, Attorneys for Appellant.

IN SUPREME COURT OF INDIANA

[Title omitted]

ORDER DENYING REHEARING—April 27, 1937

Come now the parties by counsel and the Court, being advised in the premises, denies the appellants petition for a rehearing heretofore filed herein (with an opinion pronounced by Fansler, J.) (H. I.). Treanor, J. Dissents.

G. L. Tremain, Chief Justice.

[fol. 55] IN THE SUPREME COURT OF INDIANA

[Title omitted]

OPINION ON DENIAL OF PETITION FOR REHEARING

FANSLER, J.:

On petition for rehearing, appellant earnestly contends that the decision of this case gives a retroactive effect to a statute, and permits the impairment of the obligation of a binding contract. The original opinion was intended to be understood as expressing the view that no contractual right to be continued as a teacher from year to year is involved. The teachers' contracts are made for one year, and the terms may be changed annually. The Tenure Statute, in effect, grants a privilege to the teacher who has served five years, and signed a new additional contract to continue as a teacher, under certain conditions, by limiting the power of the local school officers to employ any one in the place of a tenure teacher. The teacher had no contractual right to continue in employment. The statute merely deprived the local school officers of power to employ any other teacher [fol. 56] in place of the tenure teacher, and required that the tenure teacher be reemployed unless there was a necessary reduction in the number of teachers. Schools are un-

der the control of the Legislature, and local government units act only as legislative agencies in the operation of the schools. The statutes, the Constitution, and the law, must be deemed to be a part of every teacher's contract. If appellant's contention could be sustained, it would mean that the statute, as it existed at the time a teacher acquired tenure status, could not be changed, even in respect to the grounds of cancel-ation of removal.

As pointed out in the original opinion, the Legislature, in enacting school laws, exercises one of the functions of sovereignty. The right to control public policy, in respect to the management and operation of schools, cannot be contracted away by one Legislature so as to fix a permanent public policy, unchangeable by succeeding Legislatures.

But, if the relationship were considered as controlled by the rules of private contract, the provision for reemployment from year to year is not enforceable for want of mutuality. The teacher may terminate the tenure at any time, except during the school year and for thirty days previous to its beginning, by giving five days' notice. This provision clearly indicates that the statute was not intended to bind the state or the teacher to a permanent relationship; that it was intended only as a limitation upon the discretion of local school officers. Davis v. Davis, Director General of Railroads (1926) 197 Ind. 386, 151 N. E. 134; Kostanzer et al. v. State ex rel. Ramsey (1933) 205 Ind. 536, 548, 549, 187 N. E. 337, 342.

[fol. 57] The latter case was an action by a teacher to mandate the school board to continue her as a teacher in the schools under the Tenure Statute. It is said in the opinion: "The tenure act permits a teacher to cancel his contract at any time after the close of a school term up to thirty days prior to the beginning of the next school term, provided five days' notice is given, and appellant contends that there was no contract between appellee and appellants for the reason 'that a contract which does not bind both parties binds neither of them.' This proposition is undoubtedly supported by the law of contracts. But there is nothing in the law of contracts to prevent one party to a contract granting to the other the privilege of rescission or cancellation on terms not reserved to the former party. The local school corporations are agents of the state in the administration of the public schools and the General Assembly has the power to prescribe the terms of the contract to be executed

by these agents." The controlling principle is that local school corporations, being agents of the state, must follow the statute and continue tenure teachers in employment so long as the statute is unrepealed. It is of no consequence whether the tenure rights are based upon a contractual obligation or upon a mere privilege granted by the state revocable at will. The ministerial agents must obey the statutory mandate in either event. But now the statute has been repealed. The Legislature is no longer exercising discretion in the matter of reemployment. That discretion is again lodged in the local officers. It is now contended, not that ministerial officers must follow the dictates of the [fol. 58] Legislature, but that the Legislature itself is bound by contract to continue teachers' tenures; that the tenure arises out of a contract which created a vested right and not out of a mere privilege or by grace. No question of the state being bound by contract creating a vested right was presented in the Kostanzer case. Teachers have no contractual right to a license, but, when they have complied with the statutory requirements, ministerial officers may be mandated to grant the license. The statement that "there is nothing in the law of contracts to prevent one party to a contract granting to the other the privilege of rescission or cancellation on terms not reserved to the former party," is correct as an abstract proposition of law, but it is not without limitation. In contracts for personal services, the provision granting a privilege to the employee to cancel or rescind at will must be supported by some consideration independent of the reciprocal agreements to render service and to be paid for services rendered. It is said in Williston on Contracts, § 104, p. 351, that: "The promise of either party may be optional, if the exercise of the option not to employ or to serve involves a detriment to the promisor, or benefit to the promisee." See McMullan v. Dickinson Co. (1896) 63 Minn. 405, 65 N. W. 661. Where an employer, as part of the agreement in settlement of a claim for damages arising out of negligence, agrees to give the employee permanent employment, and the employee is left free to cancel and leave the employment, the contract is not bad for want of mutuality for the reason that the settlement is payment in advance for the privilege of discontinuing the employment at will. Other similar considerations might be suggested, but it is well settled that, where the term of service is left to the [fol. 59] discretion of one party, it is a contract at the will

of either and may be terminated by either. It has been said that where the terms of a contract of employment give a privilege to one party to terminate the contract, the law will extend the privilege to the other. Pennsylvania Co. v. Dolan (1892) 6 Ind. App. 109, 32 N. E. 802; Cox v. Baltimore & O. S. R. Co. (1913) 180 Ind. 495, 103 N. E. 337.

It is contended that the opinion gives the repealing statute retroactive effect, but it does not. All annual teaching commitments continue, and the repeal acts only prospectively by striking down for the future those limitations which the statute placed upon the discretion of local school authorities with respect to reemployment of teachers for successive years.

Since the opinion was filed, the Supreme Court of the United States has sustained the Court of Errors and Appeals of the State of New Jersey in appeals from two cases involving a situation comparable in all substantial respects with the case at bar. Phelps v. Board of Education of Town of West New York et al. (No. 454, March 1, 1937) — U. S. —; Askam et al. v. Board of Education of Town of West New York et al. (No. 455, March 1, 1937) — U. S. —.

Petition for rehearing denied.

Mandate of the Supreme Court of the State of Indiana issued to the Wabash Circuit Court of Wabash County, Indiana, this 27th day of April, 1937, in conformity with the judgment of this court above stated according to law.

[fol. 60] IN THE SUPREME COURT OF INDIANA

[Title omitted]

CERTIFICATE OF COURT CLARIFYING OPINION—June 23, 1937

It is ordered that the following entry be made upon the order book of this court respecting the above entitled cause.

The original opinion contains the following statement: "A demurrer to the complaint was sustained. The relatrix contends that this was error; that, having become a permanent teacher under the Teachers' Tenure Law before the amendment, she had a vested property right in her indefinite contract, which may not be impaired under the Constitution."

In the opinion, the word "Constitution" referred to, and was intended to mean, article 1, section 10, of the Con-

[fol. 61] stitution of the United States of America.

This entry is made at the request of the relatrix in order to show jurisdiction in the United States Supreme Court of an appeal or petition for certiorari, and the clerk is authorized to certify this order, at the request of the relatrix.

In Witness Whereof, the undersigned, the Chief Justice and Associate Judges of the Supreme Court of Indiana, have affixed their hands, this 23 day of June, 1937.

Michael L. Fansler, Chief Justice. George L. Tremain. James P. Hughes. Curtis W. Roll. Walter E. Treanor.

[fol. 62] IN THE SUPREME COURT OF INDIANA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT—July 8, 1937

To the Supreme Court of Indiana and to the Clerk of Said Court:

The relatrix, Dorothy Anderson, hereby requests that there be duly certified a full, true and complete transcript of all of the record, rulings, decisions, opinions, and proceedings in the above entitled cause in the Supreme Court of Indiana, including full, true and complete copies of the original transcript filed herein, the assignment of errors, the decision, minority and majority opinions rendered herein, the petition for rehearing filed herein, and the rulings and opinions rendered in respect thereto, and also of the judgment and mandate in said Supreme Court of Indiana, also of the order and certificate signed by the Chief Justice and Judges of said court and directed to be made a part of the record in said cause on June 23, 1937, for transmission to the Supreme Court of the United States [fol. 63] and for use in the review of said judgment by the Supreme Court of the United States by proceedings in said court in certiorari.

Plummer & Plummer, Denver C. Harlan, Paul R. Shafer, Charles Eggleston, Thomas F. O'Mara, Counsel for Dorothy Anderson.

[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 65] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 15, 1937

The petition herein for a writ of certiorari to the Supreme Court of the State of Indiana is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.